



Appeal Decision

Site visit made on 16 February 2023

by Chris Forreth BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2023

Appeal Ref: APP/H1840/D/22/3299139

Giardinelli, Pensham, Pershore, Worcestershire WR10 3HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Sam Di Marco against the decision of Wychavon District Council.
 - The application Ref W/22/00389/HP, dated 14 February 2022, was refused by notice dated 13 May 2022.
 - The application sought planning permission for a pitched roof on an existing detached garage with staircase to roof space without complying with a condition attached to planning permission Ref W/01/00852/PP, dated 27 June 2001.
 - The condition in dispute is No. 3 which states that: The garage hereby approved shall only be used for the domestic storage purposes incidental to the domestic use of the dwelling and shall not be used for commercial or business purposes or converted into habitable accommodation.
 - The reason given for the condition is: In order to prevent the overdevelopment of the site and protect the amenities of the area.
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Decision

1. The appeal is allowed and planning permission is granted for a pitched roof on an existing detached garage with staircase to roof space at Giardinelli, Pensham, Pershore, Worcestershire WR10 3HB without compliance with condition 3 previously imposed on the planning permission Ref W/01/00852/PP, dated 27 June 2001.

Applications for costs

2. An application for costs was made by Mr & Mrs Sam Di Marco against Wychavon District Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether condition 3 from permission W/01/00852/PP is necessary.

Reasons

4. The appeal site is located in a rural area which in planning policy terms is classed as 'open countryside'. Whilst there is some other development in the surrounding area, this is limited and there is nothing to suggest that the current proposal would have an unacceptable impact on the amenities of the

- occupiers of nearby dwellings or on any agricultural activities on the surrounding and nearby land.
5. The appeal building is a detached double garage, which has a first floor over the garage space, for which the first floor was permitted under planning permission W/01/00852/PP.
 6. At my site visit, I saw that the first floor had a small shower room, a storage room with the main area having a single and a double bed, albeit that the beds appeared to be a less than permanent arrangement. As I understood it, a family member was staying in the appeal building whilst visiting their parents. It is also significant that there were no cooking facilities in the building and the occupation of the first floor in this capacity was very clearly linked to the host dwelling.
 7. That said, what is clear from permission W/01/00852/PP is that condition 3 explicitly refers to the garage as opposed to the roof alterations which included the first floor. It is noted that this is acknowledged in the Officers' report via the committee update. From this, it is clear that the original condition fails the legal tests as it goes beyond the scope of the original development.
 8. The appeal proposal seeks to vary condition 3 for which the appellant has suggested a wording that 'the garage hereby approved shall only be used for purposes incidental to the domestic use of the dwelling'. If I was to accept that a condition is necessary, given my view above this should not refer to the garage but the development proposed (i.e. the first floor space and roof alterations).
 9. The reasons for the condition being originally imposed related to the potential overdevelopment of the site and to protect the amenities of the area. However, there is very little detail of what these concerns are, and indeed the Officers' report clearly sets out why Officers' felt that such restrictions are not necessary.
 10. Whilst the Planning Committee were entitled to come to an alternative conclusion, the only concerns raised in the committee minutes (and indeed in relation to this appeal) is that the roof space above the garage had been used as accommodation which led to enforcement action being taken. It is also stated that Pershore Town Council feel that the original condition should stand and the proposal would be overdevelopment.
 11. From the evidence before me, no formal enforcement action has been taken and reference to enforcement action appears to relate to an enforcement complaint which led to the appeal application being submitted for consideration. Should the building be used as independent accommodation (i.e. a separate dwelling) then this would require planning permission in its own right. Given this, it is not necessary to specify such a restriction in a planning condition nor is this a reason to withhold planning permission on the basis of a possible future use.
 12. In respect of potential overdevelopment of the site, it must be noted that the removal or alteration of condition 3 would not result in any additional building works, nor would it introduce any significant additional element of the occupation of the building. To that extent, I can see no planning reason why such a restrictive condition is necessary.

13. Taking all of the above into account, and that the application is to allow for the use of the first floor as incidental occupation to the host dwelling, I see no planning reason why such a condition is necessary at all.
14. As that is the scope of the application before me, I find that the removal of the condition would be acceptable. The proposal would also accord with Policies SWDP1, SWDP2 and SWDP21 of the South Worcestershire Development Plan (2016) which, amongst other matters, seek to limit development in the open countryside (with the exception of house extensions) and that they are of a high standard of design quality which integrates with its surroundings. It would also accord with the overarching aims of the National Planning Policy Framework.

Conditions

15. The original permission has two other conditions imposed on it. These relate to the implementation of the original permission and the use of matching materials. Bearing in mind that the development has already been carried out I find that neither of these conditions are now necessary.
16. As noted above, I have found that the originally imposed condition fails the legal tests for conditions, a point acknowledged by the Council in their Officers' report. Given my conclusions above, I find that neither the Councils or the appellants suggested conditions are necessary.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed.

Chris Forrett

INSPECTOR